

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation, )  
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) NO. C 15-md-02672 CRB  
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San Francisco, California  
Thursday, June 30, 2016

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

LIEFF, CABRASER, HEIMANN & BERNSTEIN  
275 Battery Street - 29th Floor  
San Francisco, California 94111

**BY: ELIZABETH J. CABRASER  
DAVID S. STELLINGS**

For Plaintiff PSC:

BARON & BUDD PC  
Encino Plaza  
15910 Ventura Blvd. Ste. 1600  
Encino, CA 91436

**BY: ROLAND TELLIS**

For Plaintiffs US. DEPT. OF JUSTICE:

UNITED STATES DEPARTMENT OF JUSTICE  
Environmental & Natural Resources Div.  
P.O.Box 7611  
Washington, D.C. 20044-7611

**BY: JOSHUA H. VAN EATON  
BETHANY ENGEL**

Reported By:

Rhonda L. Aquilina, CSR #9956, RMR, CRR  
Official Court Reporter

**APPEARANCES: (CONTINUED)**

For Plaintiffs US. DEPT. OF JUSTICE:

OFFICE OF THE ATTORNEY GENERAL  
State of California  
455 Golden Gate Avenue - Room 11000  
San Francisco, California 94102

**BY: NICKLAS A. AKERS**

For PSC:

KELLER, ROHRBACK  
1201 Third Avenue, Ste. 3200  
Seattle, WA 98101-3052

**BY: LYNN SARKO**

For Plaintiff:

ROBBINS, GELLER, RUDMAN & DOWD LLP  
120 East Palmetto Park Rd, Ste. 500  
Boca Raton, FL 33432

**BY: MARK J. DEARMAN**

For PSC:

SEEGER WEISS LLP  
77 Water Street  
New York, NY 10005

**BY: CHRISTOPHER A. SEEGER**

For PSC:

COTCHETT, PITRE & MCCARTHY LLP  
San Francisco Airport Office Center  
840 Malcolm Road  
Burlingame, California 94010

**BY: FRANK PITRE**

For Plaintiff FTC:

FEDERAL TRADE COMMISSION  
Bureau of Consumer Protection  
600 Pennsylvania Ave., N.W.  
Mailstop CC-9528  
Washington, D.C. 20580

**BY: JONATHAN COHEN  
MICHELLE SCHAEFER**

**APPEARANCES: (CONTINUED)**

For Volkswagen:

SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004

**BY: ROBERT GIUFFRA, JR.  
SHARON L. NELLES**

HERZFELD & RUBIN  
125 Broad Street  
New York, NY 10004

**BY: MICHAEL B. GALLUB**

For Porsche:

ALSTON & BIRD  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424

**BY: CARI K. DAWSON  
ATTORNEY AT LAW**

For Defendants Bosch:

CLEARY, GOTTLIEB, STEEN & HAMILTON, LLP  
2000 Pennsylvania Ave., NW  
Washington, D.C. 20006-1801

**BY: JEREMY CALSYN**

Also present: Settlement Master: Robert Mueller, III, and various interested parties

1 Thursday - June 30, 2016

8:00 a.m.

2 P R O C E E D I N G S

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4 **THE COURT:** Would you call the matter, please.

5 **THE CLERK:** Calling case 15-md-02672, In re:  
6 Volkswagen "Clean Diesel" Marketing Sales Practices and  
7 Products Liability Litigation.

8 Appearances, counsel.

9 **MS. CABRASER:** Good morning, Your Honor. Elizabeth  
10 Cabraser on behalf of the plaintiffs for the plaintiff Steering  
11 Committee.

12 **THE COURT:** Good morning.

13 **MR. VAN EATON:** Good morning, Your Honor. Josh Van  
14 Eaton for the Justice Department. I represent the United  
15 States with my co-counsel Bethany Engel.

16 **THE COURT:** Good morning.

17 **MR. AKERS:** Good morning, Your Honor. Nick Akers for  
18 the People of the State of California.

19 **THE COURT:** Good morning. I'd like to welcome you. I  
20 don't know whether one says welcome you to the litigation.

21 (Laughter)

22 **THE COURT:** But I think I could say this. I want to  
23 thank you very much for coming in this morning and appearing in  
24 this matter.

25 **MR. AKERS:** Thank you, Your Honor.

1           **MR. COHEN:** Good morning, Your Honor. Jonathan Cohen  
2 for the Federal Trade Commission. With me today is my  
3 co-counsel Michelle Schaefer.

4           **THE COURT:** Good morning.

5           **MR. GIUFFRA:** Good morning, Your Honor. Robert  
6 Giuffra with Sullivan & Cromwell for Volkswagen. And with me  
7 today is Sharon Nelles, my co-counsel, and Mike Gallub from  
8 Herzfeld & Rubin. It's good to be here again.

9           **MS. DAWSON:** Good morning, Your Honor. Cari Dawson  
10 Alston & Bird for the Porsche defendants.

11          **THE COURT:** Good morning.

12          **MR. CALSYN:** Good morning, Your Honor. Jeremy Calsyn  
13 from Cleary, Gottlieb for the Bosch defendants.

14          **THE COURT:** Good morning.

15           Well, as you know, we are on Court Call as well, which  
16 means that a number of interested parties, attorneys, press,  
17 and so forth, phone in to the Court to hear the proceedings,  
18 and we welcome them as well.

19           I notice on the Court's web site that there have been some  
20 filings in this matter, and they are the proposed settlement  
21 agreements, consent decrees, and so forth, as to a portion of  
22 the litigation.

23           I think at the outset, clearly, I want to thank the  
24 parties for complying with the Court's orders, requests,  
25 documents that have been filed that there be a resolution,

1 suggested resolution of these matters.

2 It is, of course, essential in this litigation to address  
3 the serious ongoing problems that have occurred, in particular  
4 the expectation of consumers, that their issues that they raise  
5 in the Complaint will be addressed, and so I'd like to thank  
6 the parties for turning their attention to that aspect of the  
7 litigation.

8 And I understand from Director Mueller that the hours, the  
9 time, the energy that was spent in achieving this over the past  
10 several months has been profound. It cannot be overstated. I  
11 think it was described to me, when I inquired, *well, how many*  
12 *meetings actually took place*, it was characterized as one  
13 meeting that lasted two months. And I think that there is  
14 truth to that.

15 Obviously, when one reviews the documents, it's apparent  
16 how much work, how much thought went into these proceedings not  
17 only from the plaintiffs' point of view in terms of a private  
18 plaintiff or consumer plaintiff, but also from the Government,  
19 from the Environmental Protection Agency, from the Federal  
20 Trade Commission, from the California Air Resources Board - all  
21 of these individuals, all of these entities represented by  
22 individuals. And I think you have to emphasize that fact,  
23 because we talked about the Government in its institutional  
24 sense, but really the Government institutionally is represented  
25 by individuals. And so the question really is do these

1 individuals have the concerns that -- are they aware of the  
2 concerns so that they will move governmental entities to try to  
3 resolve problems, and I think that that's happened in this  
4 particular case.

5 So I want to especially note the dedication of the  
6 independent agencies, the FTC, the EPA, and California Air  
7 Resources Board, and I'll get to some of the other issues  
8 later.

9 I think that I should note, probably what is obvious to  
10 lawyers but may not be obvious to everybody participating in  
11 this, that this is a proposed settlement, that it is the  
12 responsibility of the Court to determine whether this proposed  
13 settlement is fair, whether it's reasonable, and that is a  
14 determination yet to be made by the Court.

15 And so everyone should look at the documents, understand  
16 the documents, understand the terms of the settlement, and the  
17 Court will address those concerns, some concerns, if it has  
18 any, at a hearing set for July 26th in this court to determine  
19 whether or not preliminary approval of the settlement shall be  
20 given.

21 So now I want to turn to the unsettled portion of the  
22 case. One of the unsettled portions, and the one that concerns  
23 the Court the most at this point, are what is it that can be  
24 done with the approximate 85,000 car owners who have purchased  
25 a 3-liter car. And I thought maybe I would get an update from

1 the Environmental Protection Agency. Mr. Eaton, so if you want  
2 to come forward and tell us where we are on that.

3 **MR. VAN EATON:** Thank you, Your Honor.

4 Yes. So the Agency and the Department of Justice  
5 understand the Court's priority to address the consumer  
6 environmental concerns, and we know that we have addressed a  
7 portion of that, and some remains. So I want to assure the  
8 Court that we will continue to work expeditiously to address  
9 those.

10 In terms of the remaining vehicles, I can tell you that  
11 the agencies, the regulators continue to evaluate those. They  
12 have received proposals from the defendants that they are  
13 reviewing. It is highly technical, a lot of engineering, and  
14 it takes time for the agencies to be fully confident that  
15 whatever is being proposed is a technically sound solution.

16 So we will be prepared to update the Court as the status  
17 of that process continues, but for now I assure the Court that  
18 the regulators have given their full attention to the 3 liters,  
19 and are working with Volkswagen to try to come up with another  
20 solution.

21 **THE COURT:** So does that -- when you're reviewing  
22 these matters, proposals from Volkswagen, does that include the  
23 testing of vehicles?

24 **MR. VAN EATON:** It does. There's a lot of testing  
25 that takes place, both by the company and the regulators. Of



1 course there's a lot of data that is generated, there's data to  
2 be verified, and it is typically a months long process.

3 **THE COURT:** Well, I think that's good. I understand  
4 that. I think the EPA has to be satisfied that any proposed  
5 fix passes environmental muster, and that is your  
6 responsibility, I assume, and also the responsibility of CARB  
7 and perhaps other agencies as well.

8 **MR. VAN EATON:** That's correct. The EPA and the Air  
9 Resources Board work extremely cooperatively. They are  
10 connected at the hip on this issue. They are reviewing all the  
11 data together, and will make an informed decision when they  
12 have enough information to do so.

13 **THE COURT:** Okay. Well, I want to stress the Court's  
14 concern that while there's a proposal, a settlement proposal  
15 with respect to the 2-liter, I want to make sure that there is  
16 a proposal -- a proposed settlement, if that can be achieved,  
17 with respect to the 3-liter as well. I understand that  
18 additional testing is necessary.

19 So what I think I'd like to do is set a further status on  
20 the 3-liter issue, so that the Court can be updated, and I  
21 propose the date of August 25th, because it seems to me that  
22 you will need some additional time to perform the test on any  
23 proposed fix, and that seems to be a date that you would have  
24 information about.

25 Now, in that regard, I want to make sure that the

1 regulatory agencies bring Director Mueller into the process  
2 such that he becomes conversant with those issues, because as  
3 the Settlement Master it appears to the Court that it is  
4 necessary for him to know where we stand on it in order to  
5 advise the Court as to what the Court can or should do with  
6 respect to that, and he is really the Court's representative,  
7 and so I would appreciate your keeping him fully advised.

8 **MR. VAN EATON:** Your Honor, I can't promise the  
9 outcome, but we will do our best to make him fully conversant.

10 **THE COURT:** Great. Well, I appreciate that. Thank  
11 you very much.

12 I would like to get a report perhaps from Mr. Giuffra as  
13 to where we stand with the various Attorney Generals in the  
14 settlement process.

15 **MR. GIUFFRA:** Thank you, Your Honor.

16 First of all, I wanted to thank the Court and Director  
17 Mueller on behalf of Volkswagen, because I think that Director  
18 Mueller has really worked literally as much as any of the  
19 lawyers have to bring about this settlement. And clearly Your  
20 Honor's deadline was an important one, and we took that  
21 deadline very, very seriously, and I think we met the deadline,  
22 and we worked very hard. And Volkswagen as a company is very  
23 committed to regain the trust of its customers, its regulators,  
24 and the American public, and we want to make things right, and  
25 I think the Settlement Agreement is an important first step.

1 Now, in terms of the scope of the Settlement, we've  
2 obviously got the federal regulators, and we've got the PSC.  
3 We have worked very hard, and I can report to the Court that  
4 thus far 44 states, including the District of Columbia, have  
5 endorsed the Settlement Agreement that we've reached. We've  
6 reached resolutions with those states with respect to their  
7 consumer relief statutes, their UDAP statutes, and that  
8 includes both a 2-liter cars and the 3-liter cars, and the  
9 states include the biggest states in the country: California,  
10 Texas, Florida, New York. It was a multi-state coalition, Your  
11 Honor, that was led by New York and Massachusetts, and they  
12 worked very hard to keep together their group. But then we  
13 also reached separate agreement, with, among other states,  
14 California and Texas. Those agreements are in the process of  
15 being filed with the relevant courts. We have a handful of  
16 states that are left, and I can assure the Court that we are  
17 working expeditiously to bring those states into the fold,  
18 because we think it's important for the public and for our  
19 customers to understand that so many states support this  
20 settlement and think that the resolution that's reached is one  
21 that is fair and reasonable, and, in fact, provides substantial  
22 compensation to consumers.

23 So we're moving full speed ahead on that, and I'm hopeful  
24 that we'll get maybe several more states to almost get to all  
25 50 states, maybe one or two will be stragglers, but, you know,

1 this is a very broad comprehensive settlement. I've never seen  
2 one done as quickly as this with so many different parties.

3 On the 3-liter, Your Honor, let me just make one  
4 observation. From the standpoint of the company, this became  
5 an issue much later in the process, it became an issue in  
6 November. We are working expeditiously to resolve the 3-liter  
7 issue. It's a different engine than the 2-liter engine. It's  
8 a bigger engine, the amount of NOx, the excess NOx is much  
9 less, and we're working very closely with EPA and CARB to  
10 resolve the issue. As Your Honor noted, there is testing that  
11 is going on. The company believes it can fix the 3-liter to  
12 the standard to which those cars were originally certified, and  
13 we believe that the fix will not be a complicated fix, and we  
14 believe it will be one that will not have an adverse impact on  
15 performance. It's just a process that will take time, because  
16 of the need to do the durability testing to make sure that that  
17 fix is a long lasting fix.

18 **THE COURT:** Thank you. Again, to Volkswagen, let's  
19 make sure that Director Mueller is fully apprise as to the  
20 progress of trying to resolve the 3-liter.

21 **MR. GIUFFRA:** We will keep Director Mueller very much  
22 engaged. And, again, he's been critical to the success of this  
23 process.

24 **THE COURT:** And also I would say, as to the states,  
25 I'm delighted that you have 44. I think the goal here is to

1 leave no state behind.

2 (Laughter)

3 **THE COURT:** And whether they are big states or little  
4 states, they are states, and they have an independent and  
5 important function in this process. But, again, I am quite  
6 sure that their goal, like the goal of all of us, is to see  
7 whether there can be a resolution that's fair and reasonable to  
8 all people affected and all states that are affected.

9 So thank you very much.

10 **MR. GIUFFRA:** Thank you, Your Honor.

11 **THE COURT:** I wanted to -- I know that this proceeding  
12 is rather lengthy, so I wanted not to prolong it, but I wanted  
13 to emphasize one other thing, which is that the Court issued an  
14 order as to confidentiality, and settlement proceedings by  
15 their very nature are protected by the law in the sense that  
16 what is said in settlement discussions, negotiations, and so  
17 forth, is not disclosed unless there's some order of the Court  
18 which would place that disclosure within an exception to the  
19 general rule. But the general rule is that those matters are  
20 confidential.

21 The Court has issued an order with respect to what the  
22 parties can and cannot say about those proceedings. So while I  
23 can appreciate the fact that interested parties, in particular  
24 the press, may want to write stories, the inside story of what  
25 actually happened in these negotiations, and so forth, as far

1 as the Court is concerned, while that may be interesting and  
2 may be significant, it may not, I don't know, I must protect  
3 the integrity of settlement disclosures by issuing such an  
4 order, and that the fact of the matter is that what is  
5 important from the public's point of view, at least in the  
6 Court's view, is what comes out of the discussion, not the  
7 discussions themselves, other than that they should take place.  
8 And so that parties in a discussion will feel comfortable, and  
9 feel free to disclose things to the other side to the Director,  
10 it's essential that these discussions remain at this point  
11 confidential. And so I don't want any member of the press to  
12 be too upset when they call a lawyer and say, *well, come on,*  
13 *tell me off the record,* or so forth, *what really happened,* that  
14 lawyer should not respond. That lawyer should honor the  
15 disclosure, the prohibition against disclosures.

16 And I think that it will be seen in the, quote, fullness  
17 of time, that what is really significant are the documents  
18 evincing the terms of the settlement, and those are disclosed.  
19 They are fully disclosed. They are on the Court's web site.  
20 They are on various web sites of the plaintiffs' Steering  
21 Committee, I think VW, I think the FTC, is that correct, the  
22 FTC, the EPA. So what has been agreed upon, by the parties is  
23 knowable and known, and I would encourage anyone who needs to  
24 or wants to to find out what are the terms of the settlement,  
25 to go to those web sites and look at it for themselves in order

1 to make a determination as to what the status of these  
2 proceedings are.

3 And again, our work is ongoing. And so Mr. Giuffra, I'm  
4 just going to have to tell you that to get acquainted with your  
5 son may take a bit longer --

6 (Laughter)

7 **THE COURT:** -- or reacquainted. But that's true of  
8 all lawyers who have, you know, who have set aside personal  
9 obligations and have responded to the call of their  
10 professional responsibilities in achieving these resolutions,  
11 and so I want to thank you once again.

12 I will see you all, perhaps a few more, on July 26th. And  
13 I apologize for the length of this proceeding.

14 Thank you very much. We're in recess.

15 (Proceedings adjourned at 8:22 a.m.)

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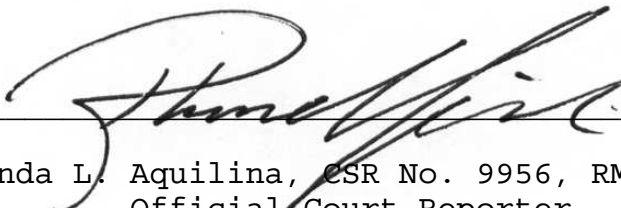
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Thursday, June 30, 2016

  
Rhonda L. Aquilina, CSR No. 9956, RMR, CRR  
Official Court Reporter